

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

NICHOLSON-LAYNE, LLC,

Plaintiff,

v.

DRILLGEAR, INC. a/k/a DRILLGEAR USA,

Defendant.

CIVIL ACTION
NO.

COMPLAINT

PARTIES

MAGISTRATE JUDGE Brader

1. The plaintiff Nicholson-Layne, LLC ("NL") is a Delaware limited liability corporation registered to do business in Massachusetts and with a principal place of business at 225 Friend Street, Boston, Massachusetts.

2. The defendant Drillgear, Inc. a/k/a Drillgear USA ("Drillgear") is, upon information and belief, a Texas corporation having an office at 7735 Miller Road, No. 3, Houston, Texas.

JURISDICTION

3. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between NL and Drillgear and because the matter in controversy exceeds \$75,000, exclusive of interest and costs.

FACTS

4. NL is a subcontractor to Turner Construction Company ("Turner") on a construction project called the Massport Central Parking Garage Repairs and Expansion, MPA Project No. L 219-C3 (the "Project") located at Logan Airport in East Boston, Massachusetts.

5. Pursuant to its subcontract with Turner on the Project, NL is responsible for performing drilled pile foundations. The amount of NL's base subcontract with Turner is \$6,354,000.

6. In order to perform its subcontract work for Turner on the Project, NL needs to use certain materials, including drill casings and starters. On or about February, 2004, NL asked Drillgear to provide NL with a quotation for drill casings and starters for NL to use on the Project. Drillgear provided such a quotation to NL on February 11, 2004, which quotation stated: "We will commit to these Prices throughout the entire project" (the "February, 2004 Quotation and Commitment").

7. NL accepted Drillgear's February, 2004 Quotation and Commitment and communicated that acceptance to Drillgear. NL relied on the February, 2004 Quotation and Commitment in the bid which NL submitted to Turner, which bid was subsequently accepted by Turner. Subsequently, in late April, 2004, NL placed its first order for drill casings and starters with Drillgear as per Drillgear's February, 2004 Quotation and Commitment, and Drillgear fulfilled that order and charged the prices for that order as set forth in the February, 2004 price Quotation and Commitment.

8. On May 18, 2004, Drillgear sent a supplemental quotation to NL containing both the same items listed on the February, 2004 Quotation and Commitment, as well as several additional items with prices (the "May, 2004 Quotation and Commitment"). The May, 2004 Quotation and Commitment stated: "We will commit to these Prices throughout the entire project". NL accepted the May, 2004 Quotation and Commitment and communicated that acceptance to Drillgear.

9. On May 25, 2004, NL submitted an order to Drillgear for a certain amount of items listed in the May, 2004 Quotation and Commitment. This order was for an estimated quantity of items totaling in excess of \$1,700,000.00.

10. Drillgear subsequently delivered some of the items ordered by NL, charging the prices set forth in the February, 2004 and May, 2004 Quotations and Commitments. Some of the items delivered were of poor quality causing NL to reject them.

11. In July, 2004, several months after the February, 2004 and May, 2004 Quotations and Commitments had been made by Drillgear and accepted by NL, and after Drillgear had shipped certain items to NL at the prices set forth in the February, 2004 and May, 2004 Quotations and Commitments, Drillgear stated that it would no longer honor the February, 2004 and May, 2004 Quotations and Commitments. This constituted a breach of contract by Drillgear.

12. Drillgear's breach of contract has caused NL substantial damage. NL has been forced to secure alternative sources for the drill casings and starters, which has caused, and is expected to cause, NL to incur costs in excess of \$800,000.00 more than what it would have paid if Drillgear had not breached its contract with NL.

13. Drillgear has invoiced NL \$292,328.50 for the drill casings and starters which it did ship to the Project. It is NL's position that NL is entitled to offset this amount against the amount owed to NL by Drillgear due to Drillgear's breach of contract, such that no amount is due and owing by NL to Drillgear.

COUNT I
(Breach of Contract)

14. NL repeats and re-alleges the allegations contained in paragraphs 1 through 13, supra.
15. The conduct of Drillgear, as hereinbefore alleged, constitutes a breach of contract.
16. As a direct and proximate result of Drillgear's breach of contract, NL has suffered, is suffering, and will continue to suffer damages.

COUNT II
(Action for Declaratory Judgment)

17. NL repeats and re-alleges the allegations contained in paragraph 1 through 13, 15 and 16, supra.
18. An actual controversy of justifiable nature presently exists between NL and Drillgear concerning Drillgear's claim that it is owed \$292,328.50 by NL.
19. Pursuant to M.G.L. c.231A, this Court may enter a declaratory judgment as to Drillgear's claim that it is owed \$292,328.50 by NL.
20. The issuance of declaratory relief by this Court, and compliance by Drillgear with such relief, should be sufficient to terminate the existing controversy between the parties.

COUNT III
(Estoppel)

21. NL repeats and re-alleges the allegations contained in paragraphs 1 through 13, 15 and 16, and 18 through 20, supra.
22. Drillgear was aware that NL accepted the February, 2004 and May, 2004 Quotations and Commitments, and Drillgear knew that NL was relying on the February, 2004 and May, 2004 Quotations and Commitments in setting NL's subcontract price with Turner.

23. NL's reliance on the February, 2004 and May, 2004 Quotations and Commitments was reasonable based, among other things, that Drillgear used the prices set forth in the February, 2004 and May, 2004 Quotations and Commitments for the items that it delivered to NL in June and July, 2004, and that NL had notified Drillgear of NL's acceptance of the February, 2004 and May, 2004 Quotations and Commitments before Drillgear attempted to unilaterally modify them in July, 2004.

24. NL's reliance upon the representations and conduct of Drillgear has been reasonable and NL has been prejudiced by Drillgear's conduct, such that Drillgear is estopped to deny that the February, 2004 and May, 2004 Quotations and Commitments represent a valid agreement between NL and Drillgear.

COUNT IV
(Breach of Covenant of Good Faith and Fair Dealing)

25. NL repeats and re-alleges the allegations contained in paragraphs 1 through 13, 15 and 16, 17 through 20, and 22 through 24, supra.

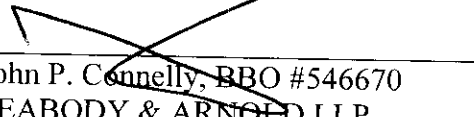
26. The agreement which NL reached with Drillgear regarding the February, 2004 and May, 2004 Quotations and Commitments carried with it an implied covenant of good faith and fair dealing.

27. Drillgear's conduct as described above constitutes a breach of its agreement with NL and a violation of the covenant of good faith and fair dealing implied in that agreement.

28. NL has suffered and will suffer damages as a result of Drillgear's breach.

WHEREFORE, NL respectfully requests that this Court enter judgment for NL and against Drillgear in an amount to be determined at trial, with interest, costs and attorneys' fees, together with such additional or alternative relief as is deemed just and proper.

PLAINTIFF NICHOLSON-LAYNE, LLC
By its attorneys,



John P. Connelly, BBO #546670
PEABODY & ARNOEL LLP
30 Rowes Wharf
Boston, MA 02110
(617) 951-2100

Dated: January 4, 2005

604397

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nicholson-Layne, LLC

DEFENDANTS

Drillgear, Inc. a/k/a Drillgear USA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Suffolk County
(EXCEPT IN U.S. PLAINTIFF CASES) MACOUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

John Connelly
Peabody & Arnold LLP
30 Rowes Wharf
Boston, MA 02110
(617) 951-2100 BBO #546670

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only) (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify) _____
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. §1332 diversity action for breach of contract and other claims for defendants failure to perform on contract to supply construction materials

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐DEMAND \$
in excess of
\$800,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Nicholson-Layne, LLC v. Drillgear, Inc. a/k/a Drillgear USA
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- ___ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ___ II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.
- X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ___ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ___ V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).
none
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
no
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? no
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) _____
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? no
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). X YES no OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). X YES no
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? X YES no (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Eastern
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION no OR WESTERN SECTION no

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John P. ConnellyADDRESS Peabody & Arnold LLP, 30 Rowes Wharf, Boston, MA 02110TELEPHONE NO. (617) 951-2100

(Category.frm - 09/92)